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6 **U.S. DISTRICT COURT**  
7 **DISTRICT OF NEVADA**

8

9 KEVIN J. MIRCH, ESQ.,

Case No. 3:05-cv-00641-RLH-RAM

10 Plaintiff,

11 v.

12 BRUCE BEESLEY, ROB BARE, BRIDGET ROBB  
13 PECK, DONALD CHRISTENSEN, STATE BAR OF  
NEVADA, DOES I-X, A-Z CORPORATIONS,

14

15 Defendants

16 **Reply in Support of Response to Order re Fees**

17 Defendants Bruce Beesley, Bridget Robb Peck and Donald Christensen, by and through  
18 their counsel of record, Piscevich & Fenner, submit their Reply to Plaintiff's "Opposition to  
19 Response to Order re Fees, filed January 25, 2007, as follows:

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21 **I. Reply Argument**

22 Mirch's recitation of facts is irrelevant to the issue of sanctions. Mirch has had the  
23 opportunity to oppose sanctions on the basis of his health, or any other reasons, but failed to  
24 persuade the Court that his Complaint was anything but frivolous. Defendants filed their Motion  
25 for Sanctions long before the Court initially decided Mirch's first request for an extension, and  
26 long before he petitioned the Ninth Circuit for a Writ of Mandamus. In any event, the Court  
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1 should note that the evidence Mirch finally submitted to support his extension requests could  
2 have been submitted at the time of the requests rather than after an interlocutory appeal.

3 Second, Mirch's arguments with respect to the Court's ruling on fees are inapposite. This  
4 Court awarded fees as a sanction for Mirch having filed a frivolous complaint, and ordered that  
5 Defendants "submit evidence of reasonable attorney's fees." [Order, p. 19, ln. 3]. Contrary to  
6 Mirch's assertions, Defendants submitted (1) the Declaration of counsel, and (2) billing records,  
7 from which the Court may determine all the factors necessary for an award. *Kerr v. Screen  
8 Extras Guild, Inc.*, 526 F. 2d 67, 69-70 (9<sup>th</sup> Cir. 1975). The Declaration states the hours and  
9 rates; the billings reflect the time and labor required, the novelty of Mirch's obfuscatory  
10 pleadings and arguments, the low hourly rate, that the fee is hourly, and the undesirability of the  
11 case. The Court may take judicial notice that Piscevich & Fenner has an excellent reputation for  
12 its skill and abilities in malpractice defense, as Mirch well knows. Accordingly, Defendants  
13 have complied with all the requirements necessary for an award of fees as a sanction for Mirch's  
14 frivolous lawsuit.

15 Mirch's proposed limitation of the fees does not make sense in the context of a sanction.  
16 Defendants incurred all of their fees as a result of Mirch's lawsuit, not just those arising out of  
17 the Motion for Sanctions.

18 Finally, Mirch misapprehends Defendants' Memorandum of Costs. Defendants are  
19 entitled to their costs regardless of the ruling on sanctions. Defendants submitted and properly  
20 supported their Memorandum of Costs, and costs should be awarded to them as the prevailing  
21 party.

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1           II. Conclusion

2           Defendants submitted adequate evidence of reasonable attorneys' fees pursuant to this  
3 Court's Order. Mirch's proposed limitations are unwarranted, and misrepresent the evidence  
4 submitted.

5           **WHEREFORE**, Defendants request relief as set forth in their "Response to Order Re Fees," and  
6 for such other and further relief as the Court deems appropriate in the circumstances.

7  
8  
9           Dated this 26<sup>th</sup> day of January, 2007.

10           PISCEVICH & FENNER

11  
12           By: /s/ \_\_\_\_\_  
13           Mark J. Lenz, Esq.  
14           499 West Plumb Lane, Suite 201  
15           Reno, NV 89509  
16           Attorneys for Defendants

## **CERTIFICATE OF SERVICE**

Pursuant to FRCP 5(b), I hereby certify that I am an employee of PISCEVICH & FENNER and that on this date I caused to be served a true and correct copy of the document described herein by the method indicated below, and addressed to the following:

## **Document Served:**

**REPLY IN SUPPORT OF RESPONSE  
TO ORDER RE: FEES**

**Person(s) Served:**

Kevin J. Mirch  
329 Flint Street  
Reno, NV 89501

Hand Deliver  
XX U.S. Mail  
                 Overnight Mail  
                 Facsimile  
[number]

DATED this 26<sup>th</sup> day of January, 2007.

TERESA BORJON